NO. 28/20/55-Judl. (I)

Secret

(Keep)

Government of India.
Ministry of Home Affairs.
(Judicial - I Section)

Subject:- The Offences against the Indian national flag Ordinance, 1955 - Promulgation by the Governor of Madras.

Lalit Rajee.

F. No. 17/159/57-Judl (I)

11/9/57

NATIONAL ARCHIVES OF INDIA

TRANSFERRED TO NAI

28/20/55-Judl

MINISTRY OF HOME AFFAIRS

Discussed with Secretary. We may agree to this Ordinance. Law Ministry may kindly see before we issue the necessary instructions.

(M. Gopal Menon)
Deputy Secretary
29-7-1955.

THE MINISTRY OF LAW
13450/55-Adv.

Ministry of Law
(Sh. H.R. Krishnan, JS)
MHA u.o. No. F. 28/20/55-Ft dated 29.5.55

NOTES IN THE MINISTRY OF LAW.

From the strictly legal view point, there is no objection to the President's giving instructions to the Governor of Madras for promulgating this Ordinance.

2. On the wording also, I note that this Ordinance does not punish preparation. Preparation as such is not punishable under the Penal Code; but, it has been expressly made punishable to prepare for the commission of certain offences, such as dacoity, counterfeiting, and waging war against the State. If, as it appears, the Government want to forestall the desecration of the Flag, even before the last overt act towards it, then, it should make preparation also an offence. Most often, such acts as really amount to attempt, may be made in public demonstrations, and arrests and stopping of the ritual of desecration may be very sensational. On the other hand, if the authorities try to arrest before the very last overt act, before the actual desecration, then the offender may escape by showing that what he had done was an act of preparation and not an attempt. So, I would advise that preparation also should be included in clause 2 of the Ordinance.

3. The State Government may have to follow it up with an Act of legislature.

(H.R.Krishnan)
29.7.55
Joint Secretary

M.H.A(Shri M.Gopal Menon ICS)

13450 29.7.55

NATIONAL ARCHIVES OF INDIA

(Serial nos. 2 + 3) (Receipts) pp. 5-8/cor.

(3) Issue wireless below.

HM has × agreed.

× informed by telg 29.7.

29.7.55

Issue.

29.7.55

Issue: Serial no. 4 p. 9/cor

Issue - Serial no. 5 pp 10-12/cor. 2 copies

Withdrawn. p. 13/cor

Enclosed

no further actions appears outstanding on this file. It may be closed. D.S.(SCT) may perhaps like to see.

8/8

8.8.55

DS. (SCT)

8/8.

Serial no. 6 (Receipt) pp 13-14/cor (6 Y)

For information. J.S.(A) may also perhaps like to see

9/8

9.8.55

DS (SCT)

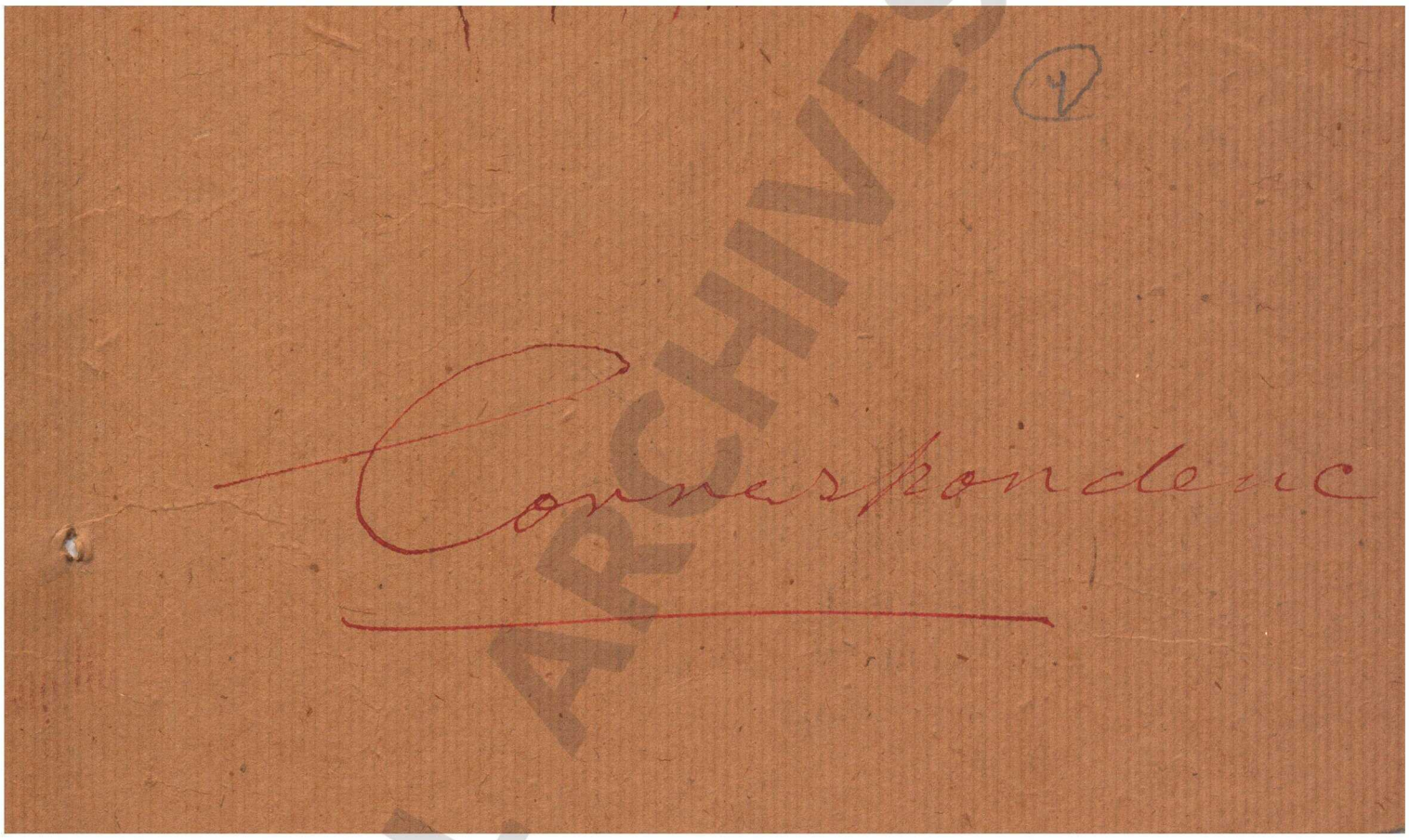
JS(A)

9/8.

10/8/55

10/8/55

Blkeep



NATIONAL ARCHIVES OF INDIA

SECRET

Sl.no. 1

5

IMMEDIATE

Public (S.C.) Department

D.O.No.S/3132-1/55 Dated 28th July, 1955

My dear Pai,

Please refer to your D.O.No.346/55-PSHS dated tbe 23rd July, 1955, on the subject of the anti-Hindi agitation by way of burning the National Flag which has been announced for the 1st August, 1955, by the Dravida Kazhagam in this State.

2. This Government have carefully considered the steps that should be taken to prevent the burning of, or any other form of desecration against, the Union Flag as held out by Sri E. V. Ramaswami Naicker and his party. They have been advised that, under the Law as it stands at present, it may not be possible to effectively prevent the burning of the Union Flag, and the position with regard to taking criminal action involving deterrent punishment after the event is also not very satisfactory. They have, therefore, decided to promulgate an Ordinance to meet the situation.

3. A copy of the Ordinance proposed to be issued by this Government is enclosed herewith. As you would notice, section 3 of the draft Ordinance makes the offence defined in section 2 a cognisable one. This will enable us to arrest under section 151 Cr.P.C. any person who proposes to indulge in flag burning and keep him in custody for 24 hours and will be effective preventive action. It is necessary under Article 213(1) of the Constitution to obtain the previous instructions of the President to promulgate the Ordinance.

4. You would also notice that section 2 of the Ordinance makes no reference to the intention of the offender in the definition of the offence. This is to prevent the possibility of the accused arguing that they had no particular intention and thus escaping. In any case, as this is only an emergency measure, it is hoped that you would have no objection to the wide terms in which the offence is defined.

NATIONAL ARCHIVES OF INDIA

5. Sri E. V. Ramaswami Naicker in his speeches in connection with this agitation has been saying that even now he is prepared to stop the burning of the Union Flag provided and authoritative statement is issued by the Union Government that Hindi will not be compulsorily thrust on Tamil Nad. Our Chief Minister proposes to issue a statement in this connection. What the reaction of Sri E. V. Ramaswami Naicker would be to the statement cannot be foreseen at this stage. If it so happens that even in spite of this statement he decides to go on with the flag burning movement, it may become necessary to promulgate the Ordinance. Since there is not much time between now and the 30th instant, by which date the Ordinance will have to be promulgated at the latest for it to get sufficient publicity in Madras and the muffassal, I am to request you to take immediate action to get the necessary instructions from the President under Article 213(1) of the Constitution for the promulgation of the Ordinance. As soon as the President's instructions have been obtained, I am to request you to inform me (Chief Secretary to Government) telephonically, either on the 29th or at the latest on the 30th morning, so that we in turn could have the Ordinance signed and promulgated by the Governor by the 30th afternoon.

6. I am to add that, if wiser counsels prevail and Sri Naicker categorically announces the dropping of the flag burning movement, in view of the Chief Minister's statement, there may be no need to promulgate the Ordinance and we will of course inform you in due course about this.

Yours sincerely,

K. Ramunni Menon
28/3/63

(K.RAMUNNI MENON)

Sri A. V. Pai, I.C.S.,
Secretary to the Government of India,
Ministry of Home Affairs,
New Delhi.

NATIONAL ARCHIVES OF INDIA

(7) (3

An Ordinance to provide for the punishment of certain acts in relation to the Indian National Flag.

.....

Whereas the Legislature of the State is not in session and the Governor of Madras is satisfied that circumstances exist which render it necessary for him to take immediate action;

AND WHEREAS the instructions of the President have been obtained in pursuance of the proviso to Article 213, clause (1), of the Constitution;

NOW, THEREFORE, in exercise of the powers conferred by Article 213, clause (1) of the Constitution, the Governor hereby promulgates the following Ordinance:-

1. Short title.-- This Ordinance may be called the Offences against the Indian National Flag Ordinance, 1955.

2. Burning etc. of Indian National Flag an offence.- Whoever burns, desecrates or insults, or attempts to burn, desecrate or insult, or incites or encourages and person to burn, desecrate or insult, the Indian National Flag shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both.

NATIONAL ARCHIVES OF INDIA

EXPLANATION.- In this Ordinance, 'Indian National Flag' includes any pictorial representation thereof.

3. Offence to be cognizable.- An offence punishable under section 2 shall be cognizable.

July 1956. GOVERNOR OF MADRAS.

NATIONAL ARCHIVES OF INDIA

K. Kamraj Nadar,
Chief Minister of Madras.

Fort St. George
Madras.

Dated, 28/7/1955.

I agree. Necessary action may be taken immediately.

Itd. G.B.P.
29.7.55

My dear Pantji,

I enclose herewith for your information, copies of a D.O. which my Chief Secretary has written today to the Home Secretary there, and the Ordinance, the necessity for which is explained in the D.O. For the reasons which have been explained at length in the enclosures, may I request you to see that the President's instructions under Article 213 (1) of the Constitution are immediately obtained and communicated telephonically to our Chief Secretary, in any case by the morning of the 30th instant, so that we could have the Ordinance promulgated by our Governor by that afternoon, if necessary.

Yours sincerely,

Sd. K. Kamraj

Sri G.B. Pant,
Minister for Home Affairs,
Government of India,
New Delhi.

NATIONAL ARCHIVES OF INDIA

SECRET

437/55-PSHS
29.7.55

IMMEDIATE

Public (S.C.) Department

D.O.No.S/3132-1/55 Dated 28th July, 1955

My dear Pai,

Please refer to your D.O.No.346/55-PSHS dated the 23rd July, 1955, on the subject of the anti-Hindi agitation by way of burning the National Flag which has been announced for the 1st August, 1955, by the Dravida Kazhagam in this State.

2. This Government have carefully considered the steps that should be taken to prevent the burning of, or any other form of desecration against, the Union Flag as held out by Sri E. V. Ramaswami Naicker and his party. They have been advised that, under the Law as it stands at present, it may not be possible to effectively prevent the burning of the Union Flag, and the position with regard to taking criminal action involving deterrent punishment after the event is also not very satisfactory. They have, therefore, decided to promulgate an Ordinance to meet the situation.

3. A copy of the Ordinance proposed to be issued by this Government is enclosed herewith. As you would notice, section 3 of the draft Ordinance makes the offence defined in section 2 a cognisable one. This will enable us to arrest under section 151 Cr.P.C. any person who proposes to indulge in flag burning and keep him in custody for 24 hours and will be effective preventive action. It is necessary under Article 213(1) of the Constitution to obtain the previous instructions of the President to promulgate the Ordinance.

4. You would also notice that section 2 of the Ordinance makes no reference to the intention of the offender in the definition of the offence. This is to prevent the possibility of the accused arguing that they had no particular intention and thus escaping. In any case, as this is only an emergency measure, it is hoped that you would have no objection to the wide terms in which the offence is defined.

5. Sri E. V. Ramaswami Naicker in his speeches in connection with this agitation has been saying that even now he is prepared to stop the burning of the Union Flag provided and authoritative statement is issued by the Union Government that Hindi will not be compulsorily thrust on Tamil Nad. Our Chief Minister proposes to issue a statement in this connection. What the reaction of Sri E. V. Ramaswami Naicker would be to the statement cannot be foreseen at this stage. If it so happens that even in spite of this statement he decides to go on with the flag burning movement, it may become necessary to promulgate the Ordinance. Since there is not much time between now and the 30th instant, by which date the Ordinance will have to be promulgated at the latest for it to get sufficient publicity in Madras and the muffassal, I am to request you to take immediate action to get the necessary instructions from the President under Article 213(1) of the Constitution for the promulgation of the Ordinance. As soon as the President's instructions have been obtained, I am to request you to inform me (Chief Secretary to Government) telephonically, either on the 29th or at the latest on the 30th morning, so that we in turn could have the Ordinance signed and promulgated by the Governor by the 30th afternoon.

6. I am to add that, if wiser counsels prevail and Sri Naicker categorically announces the dropping of the flag burning movement, in view of the Chief Minister's statement, there may be no need to promulgate the Ordinance and we will of course inform you in due course about this.

Yours sincerely,

28/1/58

(K.RAMUNNI MENON)

Sri A. V. Pai, I.C.S.,
Secretary to the Government of India,
Ministry of Home Affairs,
New Delhi.

NATIONAL ARCHIVES OF INDIA

O.T.P. CCB No. 7780

Telegram, SECRET

From - Resonabili, Madras.
To - Foreign, New Delhi.

DTO JULY 282230
DTR JULY 290110

IMMEDIATE

No. S 3152/55.

From RAMUNNI MENON for PAI Home Secretary.

Reference your D/O letter 23rd July about flag burning movement of Kazhagam. Letter posted today night air mail along with Draft Ordinance. Please secure President's instructions thereon immediately and telephone facts to me to enable promulgation by 30th.

******

MINISTER, SECRETARY AND MINISTRY OF HOME AFFAIRS (2):

PS TO PM (4): SG: FS: CS AND CABINET SECRETARY.

Superintendent CCB

BAL (15)
29.7.55.

NATIONAL ARCHIVES OF INDIA

Pass Issue for me R

DE~~XXXX

M. Gopal Menon, I.C.S.,
Deputy Secretary

EXPRESS DELIVERY.

No.28/20/55-Judl.(I)

New Delhi,
the 29th July, 1955.

Dear Sri Ramunni Menon,

Please refer to your d.o. letter No.S/3132-1/55, dated the 28th July, 1955, regarding the Offences against the Indian National Flag Ordinance. You must have, by now, received our wireless message, a copy of which is enclosed. I am also to enclose for the consideration of the Madras Government an extract from our Law Ministry's opinion regarding the desirability of including "preparation" also in clause 2 of the Ordinance.

Yours sincerely,

Sd/-
(M. Gopal Menon)

Shri M. Ramunni Menon, I.C.S.,
Chief Secretary to the
Government of Madras,
MADRAS.

NATIONAL ARCHIVES OF INDIA

(COPY)

WIRELESS

No.28/12/55-Judl. (I)

20th July 1955.

From - Home, New Delhi.

To - RESONABILI
Madras.

IMMEDIATE:

Your D.O.No.S/3132-1/55 dated 28th July (.) President approves promulgation of Offences against the Indian National Flag Ordinance, 1955 (.) We would suggest that preparation also be made an offence by inclusion in Clause two.

....

No.28/12/55-Judl. (I)

New Delhi, the 20th July 1955.

Post copy forwarded to the Chief Secretary to the Government of Madras, Madras.

By order,
Sd/- (M.P.Rodrigues)
Under Secretary to the Govt. of India.

....

NATIONAL ARCHIVES OF INDIA

(16)

EXTRACT

x x x x

Preparation as such is not punishable under the Penal Code; but, it has been expressly made punishable to prepare for the commission of certain offences, such as dacoity, counterfeiting, and waging war against the State. If the Government want to forestall the desecration of the Flag, even before the last overt act towards it, then, it should make preparation also an offence. Most often, such acts as really amount to attempt, may be made in public demonstrations, and arrests and stopping of the ritual of desecration may be very sensational. On the other hand, if the authorities try to arrest before the very last overt act, before the actual desecration, then the offender may escape by showing that what he had done was an act of preparation and not an attempt.

So it is desirable that preparation should also be included in clause 2 of the Ordinance.

NATIONAL ARCHIVES OF INDIA

SECRET

Public (S.C.) Department.

D.O. No.S/3132-3/55. Dated the 5th August 1955.

My dear Pai,

Please refer to correspondence resting with Gopal Menon's D.O. No.28/20/55-Judl(I), dated the 29th July 1955, regarding the proposal of this Government to promulgate the "Offences against the Indian National Flag Ordinance" in connection with the anti-Hindi agitation of the Dravida Kazhagam which was scheduled for 1st August 1955.

2. As a result of the press statement issued by our Chief Minister on 29th July 1955, with regard to the adoption of the Hindi language for official purposes, about which I made mention in paragraph 5 of my D.O. to you of 28th July 1955 on this subject, (copy enclosed for your information), Sri E.V. Ramaswami Naicker announced publicly the calling off of the flag-burning movement of the Dravida Kazhagam which was scheduled for 1st August 1955. In the circumstances, we decided not to promulgate the above-mentioned Ordinance. However, as a measure of abundant caution, Collectors and the Commissioner of Police, Madras, were directed to promulgate orders under section 144 Cr.P.C., to be in force throughout the districts and Madras City, prohibiting all processions and meetings on 31st July and 1st August 1955. We are happy to say that there have been no untoward incidents whatever throughout the State. Finally I am to thank you for the promptitude with which our request for President's instructions to promulgate the proposed Ordinance was obtained and communicated to us.

Yours sincerely,

(K. Ramunni Menon)

Sri A.V. Pai, I.C.S.,
Secretary to the Government of India,
Ministry of Home Affairs,
NEW DELHI.

NATIONAL ARCHIVES OF INDIA

Sri K.Kamaraj, Chief Minister, Government of Madras, has issued the following statement:-

There appears to be a lot of misapprehension with regard to the adoption of the Hindi language for official purposes. Under the Constitution, the official language of the Union is to be Hindi, but this does not mean that Government will impose the Hindi language on the people of any part of the country against their will or without their consent. There is ample provision under the Constitution whereby the Legislature of any State may adopt any one or more languages in use in the State as the language or languages to be used for all or any of the official purposes of that State. There is nothing in the Constitution enabling the Hindi language to be compulsorily introduced in any State for any of the official purposes of that State, and the choice is entirely left to their Legislature. This position has been well recognised and I would in this context like to invite attention to the recent assurance made by the President of India in Hyderabad when he said that there was no intention to foist Hindi on the South and asked the people of South India to dispel from their minds once and for all any fear that Hindi imperialism would swamp them. He then further stated that the provisions in the Constitution regarding Hindi did not mean that there would be no scope for free and full development of regional languages, and gave an assurance that all facilities will be provided for the regional languages also to develop and flourish.

2. I may assure all concerned that the Government of this State are very much alive to this language problem and they are second to none in their anxiety to see that the Tamil Language gets its proper place in the educational and administrative fields, and that it does not suffer as a consequence of any steps that will be taken with regard to the progressive use of Hindi for official purposes of the Union. I may further state that neither the Government of India nor the State Government will take any steps likely to prejudice the interests of the non-Hindi speaking people.

I sincerely hope that in the light of what I now say, Sri Naicker and his followers will see their way to drop the demonstration scheduled for the 1st August, 1955.

The Indian National Flag is a symbol of our national honour and no Government can look on while it is being burnt or otherwise degecrated. Therefore, if unfortunately, in spite of this appeal the protagonists of this movement persist in their attempt to burn or otherwise desecrate or insult the Indian National Flag, I would like to make it clear that the Government would be compelled to adopt a strong line and take all necessary steps to prevent the perpetration of such offences and also ensure that those who indulge in this movement or incite others to do likewise, are deterrently dealt with. I only hope that we might not have any occasion for such unpleasantness. If such a necessity arises I may assure the public that the Government will not hesitate to take firm action to prevent any dishonour to the National Flag. I would therefore appeal to the people not to resort to any action that might possibly lead to breaches of the peace, particularly to avoid processions and other demonstrations they might desire to stage as a protest.

...

Issued by:
The Director of Information & Publicity,
Government of Madras.
CGK/29/7.